

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

*IN THE MATTER OF:*

GLENOAKS STATION  
BURBANK, CA 91504

DOCKET No. A2013-5

**REPLY OF THE UNITED STATES POSTAL SERVICE  
TO DR. HUTKINS'S MOTION FOR RECONSIDERATION**  
(November 7, 2013)

On October 31, 2013, Dr. Hutkins filed a Motion for Reconsideration of Order Affirming Final Determination on behalf of Petitioner Marlene Keables Benda and requested that the Commission reconsider its order.<sup>1</sup> Motion for Reconsideration at 5.

For the reasons discussed below, the Commission should reject Dr. Hutkins's request for reconsideration. First, the Commission has in the past declined to reconsider Post Office discontinuance appeals. Second, the Commission should not reconsider Order No. 1866 because the Commission has affirmed the Final Determination and the statutory 120 day procedural schedule for Docket No. A2013-5 has expired. Third, Dr. Hutkins's request for reconsideration does not provide any factual or legal grounds which require the Commission to amend Order No. 1866.

**Procedural History**

In Order No. 1772, the Commission established Docket No. A2013-5 to review the alleged discontinuance of the Glenoaks Station, Burbank, California. The

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<sup>1</sup> Petitioner Motion for Reconsideration of Order Affirming Final Determination (hereinafter "Motion for Reconsideration"), PRC Docket No. A2013-5 (October 31, 2013).

Commission established a procedural schedule which set October 18, 2013 as the expiration of the Commission's 120-day decisional period. Errata Order No. 1772.

On July 15, 2013, the Postal Service filed a Motion to Dismiss proceedings in this docket on grounds that the Commission lacked jurisdiction to hear the appeal because the administrative action pertaining to the Glenoaks Station was not a discontinuance under section 404(d) but rather a rearrangement of retail services in the Burbank community. On July 15, 2013, the Postal Service filed the Administrative Record and filed supplements to the record on July 17 and 18, 2013.

On July 23, 2013, the Public Representative filed a response to the Postal Service's Motion to Dismiss proceedings, in which she supported the Postal Service's motion. In her response, the Public Representative recommended that since the actions affecting Glenoaks Station constituted a rearrangement of retail services in the Burbank community the Commission should dismiss the appeal for lack of jurisdiction. Public Representative Response to United States Postal Service Motion to Dismiss Proceedings at 3 (July 23, 2013). Dr. Hutkins filed a Reply to the Postal Service's Motion to Dismiss and the Public Representative's Response on July 29, 2013. The Postal Service filed a Surreply to Dr. Hutkins's Reply.

On August 15, 2013, the Public Representative filed comments in which she recommended that if the Commission denied the Postal Service's Motion to Dismiss, then the Commission should affirm the Final Determination as the Postal Service complied with the requirements of section 404(d). On August 19, 2013, Dr. Hutkins filed a Response to the Public Representative's Comments.

As the result of the federal government shutdown, on October 18, 2013, the Commission issued Order No. 1851, which adjusted the procedural schedule and extended the 120-day decision period to November 1, 2013. On October 31, 2013, the Commission issued Order No. 1866, which affirmed the Final Determination to discontinue the Glenoaks Station. That same day, Dr. Hutkins requested leave to file a motion for reconsideration and filed a Motion for Reconsideration. The 120-day decisional period, as established in Errata Order No. 1772 and extended by Order No. 1851, expired on November 1, 2013.<sup>2</sup>

## **ARGUMENT**

As an initial matter, the Postal Service acknowledges that in response to a similar request for reconsideration in PRC Docket No. A2013-3, *Climax Georgia*, the Secretary of the Commission advised that there are no measures in place for Petitioners to seek reconsideration of final orders in such proceedings. Letter from Shoshana M. Grove, Secretary, Postal Regulatory Commission to Karen Toole, Clerk, City of Climax (July 10, 2013)(Commission letter denying Ms. Toole's request for reconsideration). Presumably, the Commission would follow the same approach and dispose of the pending motion on the same basis.

Even if the Commission considers the actions affecting Glenoaks Station to be a discontinuance under section 404(d) and if the Commission entertains requests for reconsideration of orders resolving Post Office discontinuance appeals, the

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<sup>2</sup> The Postal Service expresses no opinion on the Commission's unilateral extension of the procedural schedule, and does not intend to waive the right to address such action in any other matter. November 1, 2013 is used simply for the purposes of argument.

Commission's 120 day decisional period has expired. Pursuant to 39 U.S.C. § 404(d)(5), "[a] determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person." Under section 404(d)(5), the Commission "shall make a determination... no later than 120 days after receiving any [petition to review a Post Office discontinuance]." Adherence to this 120 day decisional period in the event the Commission affirms a final determination serves the public interest in ensuring efficient management of postal operations. The Postal Service must be able to discontinue a facility and make the necessary arrangements to provide replacement services and transfer employees with confidence that the Commission will not cast a cloud over a final determination that has been affirmed after the conclusion of a section 404(d) appeal action.

Furthermore, Dr. Hutkins's Motion for Reconsideration does not present factual or legal grounds which require the Commission to reconsider Order No. 1866. Dr. Hutkins argues that the Postal Service never submitted any comments, "as it always does when the Commission hears an appeal." Motion for Reconsideration at 2. Since the Postal Service did not file comments, Dr. Hutkins questions how the Commission was able to determine that the Postal Service had complied with its statutory requirements. *Id.* at 3. However, neither the Postal Service nor any other participant is required to submit a brief or comments on the merits, and the Postal Service has suffered no prejudice if the Commission affirms a Final Determination. The Commission's Rules provide that:

The statement or brief of the Postal Service and of any other participant opposing return of the matter for further consideration, shall be filed not more than 14 days after the date for filing the petitioner's statement.

39 C.F.R. §3025.42. Here, the use of the term "shall" arguably does not require that the Postal Service file a statement or brief; rather, it appears to impose a time limitation for procedural purposes. Thus, the most logical reading of the rule is that should the Postal Service file a statement or brief, that pleading must be filed within 14 days after the date for filing the petitioner's statement.

Furthermore, because the Postal Service filed a Motion to Dismiss proceedings, the Postal Service postponed submitting any filings addressing the merits of the appeal until the Commission ruled on the motion. Waiting for a resolution of a dispositive motion is the expected practice in similar proceedings. For example, the Commission's Rules for Complaints provide:

(b) If appropriate, the Postal Service may file a dispositive motion or otherwise move to delay disposition of the complaint. If the Postal Service files such a motion, unless otherwise ordered by the Commission, the period of time for filing its answer is altered as follows:

(1) If the Commission denies the motion or postpones disposition, the answer is due within 10 days of the Commission's action

39 C.F.R. § 3030.12. This Rule is similar to the effect of filing a dispositive motion in federal court. Federal Rules of Civil Procedure provide that if a party moves to dismiss the proceeding, the motion alters the period for filing a responsive pleading:

**(4) Effect of a Motion.** Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(a) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action

Federal Rules of Civil Procedure, Rule 12(a)(4). Here, the Postal Service postponed addressing the merits of the appeal until the Commission determined whether it had jurisdiction to review.

### **Conclusion**

The Commission has in the past declined to reconsider orders resolving Post Office discontinuance appeals. Additionally, the Commission should not reconsider Order No. 1866 because the Commission has affirmed the Final Determination and the statutory 120 day procedural schedule for Docket No. A2013-5 has expired. The Postal Service must be able to implement the Commission's final orders with confidence that those orders will not be reversed after the expiration of the procedural schedule. Furthermore, Dr. Hutkins's request for reconsideration does not provide any factual or legal grounds which require the Commission to amend Order No. 1866.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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